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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,995	10/19/2001	Hans Dehli	41126/MJM/H362	3109

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EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

28

Office Action Summary	Application No.	Applicant(s)	
	10/045,995	DEHLI, HANS	
	Examiner	Art Unit	
	Danton DeMille	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 28, 30-40 and 43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 28, 30-40 and 43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4-6-05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. Claims 1-15, 28, 30-40, 43 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,3-5,7-13, 37-38, 48, 56-60 of copending Application No. 09/632315. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to leave out the details to the O-ring.
2. Applicant stated that a terminal disclaimer was filed however, none was found in the last reply.
3. This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

4. **Claims 30-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rene '262 in view of Arndt 6,190,338.**
5. Rene teaches a massaging member 62 moveable along a support structure 36. The apparatus has a raceway 38 and a second raceway 40 on the opposite side supporting the support structure 36. Rene teaches a carriage assembly 60 including at least one guide wheel 80 and a biasing wheel 90 on the opposite side of the carriage for forcing and centering the carriage and centering the guide wheel 80 within the raceway 38.
6. Arndt teaches massaging members 36a-c moving relative to a support structure 30. The support structure 30 is moveable towards and away from the massage surface. Arndt teaches column 5, lines 26-42 that the support structure 30 can be pivotally attached to the frame to

provide the relative movement or can be supported by rails at both ends so it can be raised and lowered. Arndt teaches that a pivotal attachment arrangement and support rails slidably mounting the support structure are equivalent alternative ways of raising and lowering the support structure. It would have been obvious to one of ordinary skill in the art to modify Rene to pivot the support structure toward and away from the massage surface as taught by Arndt as an obvious equivalent alternative way of doing the same thing.

7. Regarding claim 30, Arndt teaches motor 78 that is mounted on the carriage assembly 60 for driving the massaging members 62 through camshaft 74 and cams 76.

8. **Claims 1-15, 28, 38-40 and 43 are allowable over prior art to which the examiner is aware.**

Response to Arguments

9. Applicant's arguments filed 4/4/5 have been fully considered but they are not persuasive. The language added to claim 30 requiring a means for driving the massaging member to be located on the carriage assembly was already taught by Rene in motor 78 mounted to the carriage 60 for driving massaging members 62 through camshaft 74 and cams 76.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

11. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

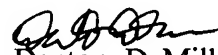
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-Th from 8:30 to 6:00. The examiner can also be reached on alternate Fridays.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson, can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

13 June 2005


Danton DeMille
Primary Examiner
Art Unit 3764